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 ZINUS, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ZINUS, INC. a California Corporation,

 Plaintiff,

 v.

 SIMMONS BEDDING COMPANY, a
 Delaware corporation, and DREAMWELL,
 LTD., a limited liability company of
 Nevada,

 Defendants.

Case No. 07-CV-03012-PVT

**JOINT MOTION FOR ADMINISTRATIVE
 RELIEF TO VACATE ORDER GRANTING
 PLAINTIFF'S MOTION FOR SUMMARY
 ADJUDICATION**

AND RELATED COUNTERCLAIMS

Pursuant to Local Rule 7-11, plaintiff Zinus, Inc. ("Zinus"), defendant Simmons Bedding Company ("Simmons") and defendant and counterclaimant Dreamwell, Ltd. ("Dreamwell") will move, and hereby move, for an Order vacating this Court's March 11, 2008 Order Granting

1 Plaintiff Zinus, Inc.'s Motion for Reconsideration; and Granting Plaintiff's Motion for Summary
2 Adjudication (the "Summary Adjudication Order").

3 In accordance with Federal Rule of Civil Procedure 54(b), the Court has the power to
4 modify any interlocutory order such as the Summary Adjudication Order at any time prior to
5 entry of final judgment. *See Persistence Software, Inc. v. The Object People, Inc.*, 200 F.R.D.
6 626 (N.D. Cal. 2001) (per Judge Hamilton). The Court has broad discretion regarding whether to
7 vacate such orders. *Id.* And interlocutory orders like the Summary Adjudication Order are
8 commonly vacated where all parties to the action agree that such action would be appropriate.
9 *See, e.g., id.* (vacating order granting partial summary judgment of patent invalidity based on
10 settlement of the parties); *U.S. Gypsum Co. v. Pacific Award Metals, Inc.*, 2006 WL 1825705
11 (N.D. Cal. 2006) (per Judge White) (vacating claim construction order and order granting partial
12 summary judgment of patent non-infringement).

13 Here, on April 21, 2008, the parties entered into a confidential Settlement Agreement that
14 completely resolves the pending litigation between the parties. Pursuant to the terms of that
15 Settlement Agreement, the parties agreed to jointly request that the Court vacate the Summary
16 Adjudication Order. The agreement to jointly file this motion was an important factor in
17 successfully resolving this litigation. Such an agreement has been found a sufficient basis to
18 support a similar motion to vacate an Order granting summary judgment of non-infringement.
19 *See U.S. Gypsum, supra* ("In support of their motion, the parties contend that the agreement to
20 file the instant motion was a significant factor in successfully resolving this litigation. The Court
21 concludes that there are no considerations that would justify denial of the motion. Accordingly,
22 the parties' joint motion to vacate is GRANTED.").

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